

## Commodity Credit Corporation, USDA

## § 1469.11

### § 1469.9 Transfer of producer's interest prohibited.

Absent written approval from CCC, the producer shall not transfer either the remaining interest in, or right to redeem, the mohair pledged as collateral for a loan nor shall anyone acquire such interest or right. Subject to the provisions of §1469.12, a producer who wishes to liquidate all or part of a loan by contracting for the sale of the loan mohair must obtain written approval of the county office on a form prescribed by CCC to remove a specified quantity of the mohair from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office.

### § 1469.10 Loss or damage.

The producer is responsible for any loss in quantity or quality of the mohair pledged as collateral for a loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

### § 1469.11 Personal liability of the producer.

(a) When applying for an individual or joint loan, each producer agrees:

(1) When signing any document, including Form CCC-633 (Mohair), (Mohair Loan Certification and Worksheet) and Form CCC-677 (Farm Storage Note and Security Agreement), that the producer will:

(i) Provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest; and

(ii) Not remove or dispose of any amount of the loan quantity without prior written approval from CCC in accordance with this section; and

(2) That violation of the terms and conditions of this part and Form CCC-677 will cause harm or damage to CCC in that funds may be disbursed to the producer for a loan quantity which is not actually in existence or for an amount of mohair for which the producer is not eligible.

(b) For purposes of this section, a "violation" shall refer to any violation of the loan agreement and this part which shall include, but not be limited

to, any incorrect certification made with respect to obtaining a loan, any misrepresentation with respect to a loan, or any mis-disposition of loan collateral.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for conduct which is in violation of this part or the loan agreement. Accordingly, if the county committee determines that the producer has engaged in any such violation, liquidated damages shall be assessed and shall be due in addition to any loan refund that may be due plus interest and charges. The amount of such liquidated damages shall be computed using the quantity of mohair that is involved in the violation and the formula set out below. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity of mohair involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(d) When liquidated damages are assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity which was the subject of the violation plus charges, plus interest applicable to the amount repaid; and

(2) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan in its entirety, plus charges, plus interest assessed from the date of the loan disbursement.

(e) When liquidated damages are assessed in accordance with paragraph

(c)(2) of this section, the county committee shall call the loan in its entirety, plus charges, plus interest assessed from the date of the loan disbursement.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section if the county committee determines that the violation occurred inadvertently, accidentally, or unintentionally.

(2) Shall furnish a copy of its determination to the State committee, and the Administrator. If the determination of the county committee is not disapproved by either the State committee or the Administrator, or a designee, within 60 calendar days from the date the determination is received, such determination may be considered to have been approved unless the Administrator issues procedures that allow for more time, or decides in an individual case that more time is needed.

(g) If, there is any violation of the loan agreement or this part, the loan may be terminated in which case there must be a full refund of the loan plus interest, and costs.

(h) If the county committee determines that the producer has violated this part or the loan agreement, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraph (d) or (e) of this section.

(i)(1) If a producer makes any fraudulent or misleading representation in obtaining, maintaining, or settling a loan, the producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation;

(iv) Late payment interest as may be provided for in part 1403 of this title; and

(v) Liquidated damages assessed under paragraph (c) of this section; and

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent or misleading representation to CCC, the value of the settlement for such collateral removed by CCC shall be determined by CCC according to §1469.14.

(j) If the amount disbursed under a loan or in settlement thereof, exceeds the amount authorized under this part, the producer shall be personally liable for repayment of such excess, plus charges, plus interest, and for any other sanction as may be allowed by law.

(k) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency plus charges, plus interest.

(l) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing or responsible under the loan note. Further, each producer who is a party to a joint loan will be jointly and severally liable for any violation of the terms and conditions of the note, security agreement, and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the mohair, or loan proceeds, after execution of the note and security agreement by CCC.

(m) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived by CCC.

(n) Remedies set out here are in addition to remedies the CCC will have through its security interest on non-loan mohair which secures the repayment of the loan made on the loan mohair.

(o) All remedies provided for in this section or part are in addition to any remedies as may otherwise be provided for in law.

[64 FR 10930, Mar. 8, 1999, as amended at 65 FR 7960, Feb. 16, 2000]